IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WP(C).No. 68 of 2006(G)

PETITIONER:

T.R. SANU, AGED 32 YEARS,
S/O. RAVINDRAN, S & R CABLE VISION,
C.C.25/5, MALSYAPURI P.O.,
VENDURUTHY, KOCHI-29.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

RESPONDENTS:

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1. COCHIN PORT TRUST, REPRESENTED BY
ESTATE MANAGER, COCHIN PORT TRUST,
W. ISLAND, KOCHI.

2. CHIEF MECHANICAL ENGINEER,
COCHIN PORT TRUST, W. ISLAND, KOCHI.

3. DEPUTY CHIEF ENGINEER,
O/O. EXECUTIVE ENGINEER (ELE.)
W.ISLAND, KOCHI.

4. M/S. ASIANET SATTELLITE COMMUNICATIONS
EAST FORT, THIRUVANANTHAPURAM.

R1 TO R3 BY ADV. SRI.B.S.KRISHNAN(SR.),SC,PORT TRUST
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN
R4 BY ADV. SRI.V. GIRI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19/06/2007, ALONG WITH WPC NO. 5336 OF 2005 AND WPC 17122 OF 2007
THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE LETTER DATED 20.7.2000 OF THE 2ND RESPONDENT.

EXT.P2 TRUE COPY OF THE RECEIPT ISSUED BY THE COCHIN PORT TRUST DATED 11.2.2003

EXT.P2(a) TRUE COPY OF THE RECEIPT ISSUED BY THE COCHIN PORT TRUST DATED 5.2.2004

EXT.P3 TRUE COPY OF THE ORDER DATED 18.2.2005 OF THE 2ND RESPONDENT.

EXT.P4 TRUE COPY OF THE LETTER DATED 15.3.2005 OF THE 3RD RESPONDENT.

EXT.P5 TRUE COPY OF THE LETTER DATED 15.3.2005 FILED BY THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 68/2006 & 5336/2005
& 17122 of 2007

Dated this the 19th day of June, 2007

C.R.

JUDGMENT

The common petitioner in these Writ Petitions is challenging Exts. P6 and P7 produced in WPC 5336 of 2005 wherein the Cochin Port Trust has demanded way-leave charges for drawing TV cable beneath Mattancherry Bridge for giving cable connection to residents of Willingdon Island which is under the control of the Cochin Port Trust. The rate fixed for the year 2001 was Rs. 79,884/- and there is marginal increase every year for subsequent years. According to the petitioner, Ext.R1(a) agreement which the petitioner executed with the Cochin Port Trust does not provide for any fee for drawing cable TV and until 2004 no demand was also raised. Counsel for the Cochin Port Trust submitted that Sections 49 and 50 of the Major Port Trusts Act provide for collection of rates for granting licence to use the property of the Port Trust, and therefore Cochin Port Trust is entitled to recover

the same under the above provisions, even though the agreement does not provide for it. It is conceded that the rates demanded under Exts. P6 and P7 are for laying pipelines and not for drawing TV cable. The contention of counsel for the Cochin Port Trust is that the same rates will apply for drawing TV cable beneath the Bridge.

2. Counsel for the petitioner relied on clause 14 of Ext.R1(a) agreement, which goes to show that no fee was chargeable for the licence given to the petitioner under the said agreement. However, it is seen from clause 16 of the agreement that agreement is valid for only one year. Consequent upon the dispute between the petitioner and Cochin Port Trust, the agreement was not renewed. Counsel for the Cochin Port Trust submitted that during the pendency of the W.P.C. petitioner was allowed to operate cable TV network, though petitioner did not make payment under Ext.P6. Even though counsel for the petitioner submitted that Ext.R1(a) agreement is in force, I do not find any self-operative provision to keep Ext.R1(a) in force continuously until it is cancelled. In fact, the provision for cancellation by six months' notice under clause 16 applies when there is proposal to cancel

the agreement within the one year period for which it was valid. Therefore the agreement ceased to be in force after expiry of one year from the date of execution of the agreement. Consequently exemption from licence fee also was available only for one year. Petitioner's contention that no fee could be charged by Cochin Port Trust for the licence given to the petitioner is untenable. In this connection, the question whether charges are payable for licence granted by Port has to be considered with reference to statutory provisions. Sections 49 and 50 of the Major Port Trusts Act are extracted hereunder for easy reference:

> 49. Scale of rates and statement of conditions for use of property belonging to Board.-- (1) Every Board shall, from time to time, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder:
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> > (a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;
> >
> > (b) entering upon or plying for hire at or on any

> wharf, quay, pier, dock, land, building, road, bridge, or place as aforesaid by animals or vehicles carrying passengers or goods;
>
> (c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;
>
> (d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.
>
> (2) Different scales and conditions may be framed for different classes of goods and vessels.
>
> (3) Notwithstanding anything contained in sub-section(1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that provided under sub-section (1).
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> 50. Consolidated rates for combination of services.-- A Board may, from time to time, frame a consolidated scale of rates for any combination of the services specified in Section 48 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in Section 49.

Even though exemption is granted from paying licence fee for one year, the Cochin Port Trust is entitled to demand licence fee in accordance with above provisions of the Act either while renewing licence

agreement or independently in exercise of statutory authority. Obviously the Cochin Port Trust did not recover charges for the first year, by virtue of specific provision contained in clause 14 of the agreement. However, after expiry of one year period of licence, Cochin Port Trust is entitled to demand rates under Sections 49 and 50 of the Act. However, it is seen that the rates charged under Ext.P6 are not relevant because those are rates provided for permission to lay pipelines. Petitioner has drawn only optic fibre cable with 2 cm diameter beneath the Bridge which in no way causes loss or damage to the Cochin Port Trust. Section 49 does not provide for fixing of rates for drawing cable TV lines, because such a situation would not have been in the contemplation of the Legislature when the Act was made. However, all facilities available through Port land and on properties of Port Trust can be subject to rates by virtue of the broad scope of Sections 49 and 50. In other words, Cochin Port Trust Board is entitled to fix rates for granting permission to draw and maintain TV cable beneath the Bridge and over Port's land. Rates can be specified for drawing cable on electric or telephone cables or even to instal poles for

starting TV cable network. In the circumstances, the authority of the Cochin Port Trust to fix rates for cable TV network under Sections 49 and 50 is upheld. Obviously Ext.P6 is not tenable because it is not fixed after due deliberation or discussion and it is only a rate adopted for other purposes. In the circumstances, Ext.P6 is vacated directing the Cochin Port Trust to fix tariff in accordance with Section 49 for all types of service in connection with cable TV network and demand the same from the petitioner and other operators. So far as petitioner is concerned, the demand should be confined to periods after expiry of Ext.R1(a) agreement.

W.Ps. are accordingly disposed of directing the Cochin Port Trust Board to decide tariff rates as directed above under Sections 49 and 50 in their next meeting. There will be direction to respondents not to dismantle the connection for three months from now on petitioner remitting Rs. 1 lakh within six weeks from today. The amount should be appropriated towards arrears after the Board decides the matter. A final decision will be taken and communicated to the petitioner within three months from now. In between there will be direction to the

concerned official of the Board to grant permission to the petitioner to draw cable on other electric poles on petitioner undertaking to pay tariff rate to be fixed by the Board from the date of commissioning. In view of petitioner's allegation that Cochin Port Trust is giving free facility to other operators, there will be direction to the Cochin Port Trust to prescribe uniform tariff to every cable TV operator so that every one has a level playing field. In other words, tariff should be the same for all and pole rentals should also be uniform for all operators. Counsel for the ASIANET submitted that ASIANET has offered discount against which concession was granted by the Port Trust. Here also, Cochin Port Trust should extend the same benefit to all operators.

(C.N.RAMACHANDRAN NAIR)
Judge